

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

RAVGEN, INC.,) AU:20-CV-00692-LY
)
Plaintiff,)
)
v.) AUSTIN, TEXAS
)
NATERA, INC., NSTX, INC.,)
)
Defendants.) FEBRUARY 28, 2023

TRANSCRIPT OF SCHEDULING CONFERENCE
BEFORE THE HONORABLE LEE YEAKEL

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14:01:23 1 (Open court)

14:01:23 2 THE COURT: We're here today for a scheduling
14:01:25 3 conference, or conference of some kind, in Cause Number
14:01:26 4 20-CV-692, *Ravgen, Incorporated v. Natera, Incorporated* and
14:01:32 5 others.

14:01:32 6 Let me start with the plaintiff, and tell me who is
14:01:35 7 here, please.

14:01:36 8 MR. DACUS: Good afternoon, Your Honor. Deron Dacus
14:01:39 9 on behalf of the plaintiff, Ravgen. And here with me is
14:01:43 10 Kerri-Ann Limbeek with the Desmarais law firm, and we're ready
14:01:47 11 to proceed, Your Honor.

14:01:47 12 THE COURT: All right. Give my just a minute.
14:01:54 13 There's so many people listed in the caption, I need to find
14:01:57 14 you-all.

14:02:00 15 And for the defendants?

14:02:01 16 MR. HASH: Your Honor, Stephen Hash from McDermott
14:02:04 17 Will & Emery, with Alex Piala, on behalf of Natera. We also
14:02:09 18 have cocounsel Michael Summersgill and Amanda Major from Wilmer
14:02:14 19 Hale. And we're ready to proceed.

14:02:18 20 THE COURT: All right. Give me those names again.
14:02:22 21 You're Mr. Hash, and I got Ms. Major. Who else is here?

14:02:24 22 MR. HASH: Piala, P-i-a-l-a, from McDermott.

14:02:27 23 THE COURT: All right.

14:02:27 24 MR. HASH: And Summersgill, Michael Summersgill.

14:02:28 25 THE COURT: All right. Thank you. All right. I've

14:02:33 1 gotten a bunch of things in from you-all on this. And, quite
14:02:37 2 candidly, I know this case has bounced around a little bit, but
14:02:39 3 the way you-all are proceeding in it is not the way this court
14:02:43 4 generally proceeds with things.

14:02:44 5 I've got 17 pending motions that I just find
14:02:50 6 ridiculous. We don't have time to deal with 17 motions in a
14:02:53 7 patent case. You're asking me to give you a trial date, yet
14:02:56 8 some of those motions want amendments to the Markman order. I
14:03:02 9 amended the Markman order once when you-all asked me to do it.
14:03:07 10 I thought that was going to be it. We don't have an ongoing
14:03:10 11 process around here where we keep revisiting Markman, no matter
14:03:15 12 what you-all may think.

14:03:16 13 Also, I've got motions in limine. And let me just
14:03:23 14 tell you, somewhere over the years that I have been practicing
14:03:26 15 law, motion in limine practice has morphed into something it
14:03:32 16 was never intended to be. The sole purpose of a motion in
14:03:35 17 limine is to exclude testimony and questions that are so highly
14:03:40 18 inflammatory or prejudicial they can't be cured by an objection
14:03:43 19 or an instruction to disregard. Going through your motions, I
14:03:50 20 see precious few, if any, of those topics.

14:03:53 21 Motions in limine are not trial management orders.
14:03:57 22 When I grant motions in limine, they become very disruptive to
14:04:04 23 the course of the trial, because they're not motions to
14:04:07 24 suppress evidence. It just means you can't offer something
14:04:11 25 unless you get up and approach the bench and ask if you can

14:04:14 1 offer it.

14:04:17 2 I know you-all are very experienced and tried a lot
14:04:20 3 of cases, and you're bound to know how disruptive that is to
14:04:23 4 the jury. It causes the jury to lose their trains of thought
14:04:26 5 when something is going on up here on the bench or I have to
14:04:30 6 excuse them and send them back to the jury room so we're more
14:04:33 7 comfortable in discussing it.

14:04:35 8 I have yet to see the case that has more than two or,
14:04:38 9 at the outside, three of those highly inflammatory or
14:04:42 10 prejudicial matters that can't be cured by an objection or an
14:04:46 11 instruction to disregard.

14:04:53 12 I've got seven Daubert motions. I've got motions to
14:04:56 13 strike portions of the expert reports. I've got motions to
14:04:58 14 supplement export reports.

14:05:01 15 My question to you is: Have you-all sat down with
14:05:04 16 one another and tried to resolve any of these pending motions?

14:05:09 17 I'll start with the plaintiff. Mr. Dacus?

14:05:12 18 MR. DACUS: With the Court's permission, Your Honor,
14:05:14 19 I'll have Ms. Limbeek address that, if that's okay.

14:05:18 20 THE COURT: That's fine. I just recognize you
14:05:19 21 because you got up first earlier.

14:05:21 22 MR. DACUS: Understood, Your Honor. Thank you.

14:05:23 23 THE COURT: Ms. Limbeek, have you-all -- and I'm
14:05:26 24 going to hear from the defendant, too. But have you done
14:05:28 25 anything at all between the two sides to try to sit down and

14:05:31 1 work out what we need to do to get this case to trial?

14:05:34 2 MS. LIMBEEK: So, Your Honor, we had a meet and
14:05:39 3 confer last week. Because the case has been stayed, we haven't
14:05:41 4 been sort of proceeding with trying to figure out the narrowing
14:05:47 5 of the motions. But we proposed to the other side last week
14:05:52 6 that we think we can compromise on a number of the motions in
14:05:56 7 limine.

14:05:56 8 And if we can meet and confer with the other side on
14:05:58 9 those, I think that, from the plaintiff's perspective, we can
14:06:03 10 narrow to just a couple of motions that we want to proceed with
14:06:05 11 in front of Your Honor. And we're happy to update you on that,
14:06:09 12 but we have not yet had that meet and confer to try to
14:06:13 13 compromise on those motions.

14:06:14 14 THE COURT: Let me hear from the defendant.

14:06:19 15 MR. HASH: Well, Your Honor, we do believe that there
14:06:22 16 are areas for compromise here. It's our understanding, though,
14:06:24 17 from the plaintiffs that they're looking to reopen expert
14:06:28 18 discovery, reopen fact discovery, file new motions. And so
14:06:33 19 before we get on the road with meeting and conferring, we
14:06:36 20 weren't sure about the status of the stay. But also it looks
14:06:40 21 like there's a whole new ball of wax of additional filings that
14:06:46 22 at least the plaintiffs are contemplating.

14:06:48 23 And to the extent that they're going to file
14:06:49 24 additional motions, file for supplementing expert discovery,
14:06:55 25 file for supplementing fact discovery, I think we would need to

14:06:57 1 be in the same boat of similarly supplementing the record.

14:07:01 2 THE COURT: Okay. Fine. You know, you are in
14:07:07 3 possibly -- well, you certainly are in Texas -- the worst
14:07:09 4 possible Division to have this case. And I know you wanted it
14:07:12 5 to go back to Waco, and you've read what I've had to say about
14:07:17 6 that.

14:07:17 7 But I've been on this bench a fairly long time now.
14:07:22 8 Most patent cases settle, so I haven't tried a lot of patent
14:07:25 9 cases to verdict. But I have managed an awful lot of patent
14:07:30 10 cases from beginning to end, and I'm not used to seeing them
14:07:34 11 like this. I'm looking -- I'm used to seeing them a whole lot
14:07:39 12 better organized by this stage in the proceeding.

14:07:43 13 So I've got another question, and that is: How has
14:07:48 14 this case changed because of the action by the Patent Trial and
14:07:56 15 Appeal Board that you described for me in your joint status
14:07:59 16 report that was filed February 3rd?

14:08:02 17 Again, I'll go to the plaintiff. Ms. Limbeek.

14:08:05 18 MS. LIMBEEK: Thank you, Your Honor.

14:08:06 19 So at this point the patent office has now -- we've
14:08:13 20 now concluded nine out of ten IPRs that were filed by various
14:08:19 21 parties. And at the conclusion of those nine IPRs, not a
14:08:25 22 single claim in either of the patents has been invalidated.
14:08:30 23 And so there are two patents-in-suit in this case, there are
14:08:33 24 seven asserted claims, currently, and there's only one IPR
14:08:38 25 left. There's only two challenged claims in that IPR, and the

14:08:44 1 patent office has already issued final written decisions in two
14:08:49 2 other IPRs on the same claims, on the same arguments, and found
14:08:53 3 that those claims were valid. And so we are expecting this
14:08:57 4 last tenth IPR to go the same way as the last nine and conclude
14:09:02 5 with all of the claims being valid.

14:09:04 6 And so I think there's a minimal, minuscule
14:09:10 7 probability that the patent office is all of a sudden going to
14:09:14 8 change course after nine IPRs concluding and the claims
14:09:18 9 remaining valid.

14:09:20 10 And I'll just note, Your Honor, that another court,
14:09:24 11 the Delaware court where there are four cases pending regarding
14:09:28 12 these -- these two asserted patents, recently lifted a stay in
14:09:35 13 those four cases based on the IPRs -- nine IPRs concluding and
14:09:41 14 not a single claim being invalidated. And, in fact, in
14:09:44 15 Delaware the defendants all agreed that the stay should be
14:09:49 16 lifted, because at this point we've heard from the patent
14:09:52 17 office repeatedly on every single asserted claim, and they're
14:09:56 18 not going to invalidate these claims and simplify the case.

14:10:00 19 And so that's the latest. The stay was lifted in the
14:10:04 20 Delaware cases on February 13th.

14:10:08 21 THE COURT: Defendants agree or disagree or want to
14:10:12 22 add anything to that?

14:10:13 23 MR. SUMMERGILL: Your Honor, Michael Summersgill on
14:10:16 24 behalf of Natera.

14:10:18 25 We disagree with some of the characterizations; we

14:10:21 1 agree with some of the facts. Just to step back, there is
14:10:26 2 still one IPR pending. That's Streck's IPR. The decisions in
14:10:30 3 that are due in April.

14:10:33 4 THE COURT: And what is involved in that?

14:10:35 5 MR. SUMMERSGILL: Well, between that -- between that
14:10:36 6 and then Natera re-exams that are stayed at Ravgen's request,
14:10:42 7 all of the claims at issue here are being challenged. And
14:10:46 8 Ravgen, you know, may have a view that they're not going to be
14:10:51 9 invalidated, but the PTAB could have a very different view.

14:10:55 10 So -- so there are still those -- that IPR and those
14:10:59 11 re-exams pending. And Mr. Hash, at Your Honor's -- if it would
14:11:04 12 be helpful to Your Honor, was going to address our view that
14:11:08 13 the stay should remain in place.

14:11:09 14 But to address your -- the question of what's
14:11:12 15 happened since the fact of -- since the close of fact discovery
14:11:17 16 and the stay in this case, a whole lot has happened.

14:11:21 17 Ms. Limbeek is correct that, you know, there have
14:11:25 18 been many decisions from the PTAB. As part of that, the PTAB
14:11:31 19 has found that certain claim limitations at issue in this case
14:11:34 20 have certain requirements. Ravgen relied on those
14:11:39 21 requirements. We think that affects those issues -- the issues
14:11:42 22 in this case. Ravgen witnesses have testified in other cases
14:11:47 23 in ways that impact the issues in this case. A judge,
14:11:52 24 Judge Klausner, in the Central District of California,
14:11:55 25 construed a Ravgen contract in a way that could severely limit,

14:11:59 1 if not eliminate, all of the damages in the case and a number
14:12:04 2 of -- of other things.

14:12:06 3 THE COURT: And what's the status of that case now?

14:12:08 4 MR. SUMMERSGILL: That case was settled shortly after
14:12:10 5 that ruling from Judge Klausner.

14:12:13 6 So the plaintiffs approached us -- Ravgen approached
14:12:17 7 us and suggested that discovery should be reopened so they
14:12:23 8 could supplement their case. Our position was the stay should
14:12:27 9 remain in place because the rationale for the stay in the first
14:12:30 10 place is still out there. There is still post-grant
14:12:33 11 proceedings pending.

14:12:34 12 But, if the stay were to be lifted, if that's
14:12:39 13 Your Honor's inclination, then the discovery should be opened
14:12:42 14 for both sides so that all of the events that have occurred can
14:12:48 15 be taken into account, because what has happened impacts the
14:12:54 16 noninfringement defenses, it impacts the invalidity defenses,
14:12:59 17 very significantly affects the damages defenses, and there's
14:13:03 18 this contract issue, Your Honor, based on Judge Klausner's
14:13:06 19 ruling that could be dispositive of the damages case and the
14:13:09 20 entire case.

14:13:10 21 So we think, if the case is going to go forward, if
14:13:13 22 the stay is going to be lifted, that the record -- discovery
14:13:17 23 should be open for both sides, we should have fact discovery,
14:13:22 24 expert discovery. And then I think after that, that will have
14:13:26 25 a -- a natural process of narrowing the number of motions at

14:13:30 1 issue.

14:13:32 2 I think -- you know, of the 21 total motions, I
14:13:34 3 think, 8 are Natera, 13 are Ravgen. And I would say that after
14:13:42 4 that initial discovery period, we would very significantly
14:13:45 5 narrow the number of motions of down to a handful.

14:13:52 6 THE COURT: It's a tennis match. Ms. Limbeek?

14:13:56 7 MS. LIMBEEK: So, Your Honor, I think while there are
14:13:59 8 few things that have occurred since the close of discovery in
14:14:03 9 this case that would require very minor and narrow supplements
14:14:07 10 to expert reports, for example, this is not a case that needs
14:14:12 11 to be -- where discovery needs to be opened, fact discovery,
14:14:16 12 expert discovery, and we need to refile everything.

14:14:19 13 And I just want to address briefly opposing counsel
14:14:23 14 comments about a potential contract issue that came up in
14:14:29 15 another case. First of all, that order has been vacated in the
14:14:33 16 other case. And, second of all --

14:14:35 17 THE COURT: Well, was it vacated because the case was
14:14:37 18 settled?

14:14:38 19 MS. LIMBEEK: Yes.

14:14:39 20 THE COURT: Okay.

14:14:39 21 MS. LIMBEEK: And the -- but regardless of that,
14:14:42 22 Natera in this case never ever raised that license as a
14:14:48 23 defense, and that license was produced in fact discovery, and
14:14:53 24 it was analyzed by both parties' experts. And Natera did not
14:14:58 25 amend its pleading to add that defense. It did not raise that

14:15:02 1 defense in its contentions. It did not raise that defense
14:15:05 2 during its interrogatory responses. And this is the first
14:15:09 3 we're hearing of it from Natera based on a vacated order.

14:15:12 4 And so I don't think that Natera should be allowed to
14:15:17 5 reopen discovery and motion practice on issues where Natera had
14:15:22 6 the document in front of it and chose different defenses than
14:15:26 7 the other defendants in different cases.

14:15:29 8 So we don't want to get into a situation where we're
14:15:32 9 relitigating things that have already -- that -- you know, the
14:15:37 10 parties have gone through this case and they've narrowed the
14:15:40 11 asserted claims and they've narrowed the defenses and they've
14:15:43 12 narrowed the prior art in preparation for trial. To now allow
14:15:48 13 Natera to reopen discovery to argue different defenses, when
14:15:53 14 nothing has changed on the facts and they had the license and
14:15:56 15 they had all of the documents during discovery, I think would
14:15:59 16 be very prejudicial and inefficient.

14:16:04 17 And so that -- in addition, after that order
14:16:08 18 vacating -- after that order was vacated, there's been an
14:16:13 19 amendment to the license indicating the parties' intent not --
14:16:16 20 for that license not to apply to the defendants in this case
14:16:21 21 and others. That makes -- you know, any motion on that is
14:16:26 22 going to -- or any amendment to the answer to add that defense
14:16:30 23 is going to be futile anyway.

14:16:33 24 THE COURT: Well, let me just say, if I were to
14:16:35 25 reopen discovery, that does not mean it reopens discovery and

14:16:40 1 the defendants get to allege different things. Discovery is
14:16:45 2 separate from pleadings. That does not mean I've reopened
14:16:49 3 pleadings or allowed an amended pleading just if I reopen
14:16:54 4 discovery. So just know that these things are maybe all
14:16:58 5 connected like the boxcars on a railroad train, but it doesn't
14:17:02 6 mean they all arrive at the station at the same time.

14:17:05 7 MS. LIMBEEK: Right. Thank you, Your Honor. I think
14:17:07 8 that's our position, too. Is that while we may need to reopen
14:17:10 9 discovery for a few very narrow categories of documents that
14:17:14 10 were not available in this case before discovery closed and the
14:17:18 11 case was stayed, we shouldn't be reopening discovery on
14:17:23 12 anything that was available before discovery closed and
14:17:27 13 dispositive motions happened in this case.

14:17:34 14 THE COURT: Go there first. Then you get a chance.

14:17:36 15 MR. SUMMERSGILL: Yes, sir. Thank you, Your Honor.

14:17:37 16 Just to respond to that, two things. To address the
14:17:42 17 broader issue, the plaintiffs -- Ravgen are the ones who
14:17:47 18 approached us that said discovery needed to be reopened,
14:17:51 19 reopening both fact and expert discovery. Now, they've
14:17:55 20 characterized it as, you know, very narrow discovery. But
14:17:58 21 really what it is, is in the IPRs they made an argument that
14:18:04 22 the claims require a specific type of agent that actually
14:18:08 23 inhibits lysis.

14:18:09 24 In this case they don't have hard evidence right now
14:18:17 25 that what is in the blood collection tubes that Natera uses

14:18:21 1 actually inhibits lysis. So that's what they're trying to add
14:18:25 2 into this case. So that's a pretty fundamental change. And,
14:18:28 3 you know, if -- if they're allowed to make that change, then
14:18:31 4 we -- we say we should be able to reopen the record as well.

14:18:35 5 THE COURT: Well, just know this: If I were to
14:18:37 6 reopen the record, it's going to apply to both of you. It
14:18:41 7 would never be my intention to allow one side to do what they
14:18:44 8 want to do and the other side not to be allowed to answer it.
14:18:48 9 So we don't need to debate that. The question is whether we
14:18:51 10 ought to reopen the record or not. But, if we reopen the
14:18:55 11 record, then everybody's going to get to play.

14:18:59 12 MR. SUMMERSEGILL: Thank you, Your Honor. And, in our
14:19:00 13 view, I mean, they're the ones that proposed reopening the
14:19:04 14 record. And we agree it should be reopened, because a lot of
14:19:06 15 things have happened since the stay that should be accounted
14:19:09 16 for.

14:19:09 17 You know, for instance, Judge Albright issued a claim
14:19:13 18 construction after expert discovery, after all discovery, had
14:19:19 19 closed. And, you know, for instance, the Federal Circuit has
14:19:26 20 held, you know, when claim construction changes after
14:19:28 21 discovery, the defendant ought to be given an opportunity to
14:19:30 22 adjust his defenses to account for that claim construction.

14:19:36 23 So given all of the things that happened, we agree
14:19:37 24 with Ravgen that the record should be reopened, and it should
14:19:41 25 be reopened for both sides.

14:19:44 1 I can walk through sort of the four categories where
14:19:47 2 we think it needs to -- the record needs to be supplemented
14:19:51 3 from Natera's perspective, if it would be helpful. But let me
14:19:55 4 first address her point on the contract issue.

14:19:58 5 So two things. Judge Klausner issued his ruling
14:20:06 6 construing that contract after discovery closed in this case
14:20:09 7 and after the stay was issued. And so that's not something
14:20:14 8 that could have been accounted for in this case.

14:20:16 9 Ravgen then has tried to avoid that result in two
14:20:22 10 ways: one, by settling the case and requesting that, as part of
14:20:27 11 the settlement, the judgment be vacated. And it was vacated as
14:20:30 12 part of the settlement, per your question.

14:20:33 13 The second piece is they've gone back and they have
14:20:36 14 tried to -- they've amended the contract with the other party
14:20:45 15 of the contract, Thermo Fisher, to try and eradicate the rights
14:20:50 16 that go to Thermo Fisher's customers, which would apply to
14:20:51 17 Natera. But the issue is they're irrevocable rights. You
14:20:54 18 can't eradicate the irrevocable rights through an amendment,
14:20:58 19 and even amendments make that clear.

14:20:59 20 So the fact of the amendments actually further
14:21:02 21 confirm that the license should apply to Natera.

14:21:08 22 THE COURT: Now, stop right there. If it's an
14:21:10 23 irrevocable right and you amend the contract, but both sides
14:21:14 24 agree to amend the contract, haven't both sides agreed to amend
14:21:17 25 the contract? You're certainly not saying a right is so

14:21:20 1 irrevocable that the parties couldn't agree to do something
14:21:25 2 different with it?

14:21:27 3 MR. SUMMERGILL: Well, because it's rights that were
14:21:28 4 granted to third parties, so third-party beneficiaries, such as
14:21:32 5 Natera and such as Quest, for instance, which was the party out
14:21:38 6 in the Central District of California. And as part of the
14:21:41 7 amendments, Thermo Fisher specifies -- Thermo Fisher is the
14:21:46 8 other party -- specified that any rights -- any vested rights,
14:21:52 9 which would be the rights granted to Natera, for instance,
14:21:54 10 would not be eliminated.

14:21:55 11 Now, you know, Ms. Limbeek said, well, we didn't make
14:22:00 12 that argument -- Natera didn't make that argument before. But
14:22:03 13 there are new fundamentally different facts both in Judge
14:22:07 14 Klausner's construction of the agreement and then their
14:22:09 15 attempted amendments to the agreement.

14:22:13 16 And we recognize, Your Honor, we would have to seek
14:22:15 17 permission to add that issue to the case, and we would plan on
14:22:24 18 doing that. We would at least request an opportunity to submit
14:22:28 19 brief briefing on why it should be added. But it's a
14:22:28 20 fundamental change to the case.

14:22:28 21 And here is sort of the gist for us, the bottom line,
14:22:29 22 on they're issue: Ravgen is trying to collect hundreds of
14:22:32 23 millions of dollars for products where they've been released
14:22:38 24 under that contract. If Judge Klausner's ruling were applied
14:22:44 25 in this case, all of the \$216 million that they currently seek

14:22:47 1 in their expert report would be eliminated. And then there's a
14:22:53 2 chance that any further damages would be eliminated. So
14:22:57 3 they're trying to collect on sales that have been released, and
14:22:59 4 we think that's significant enough that it ought to come into
14:23:02 5 this case.

14:23:03 6 The other aspect of damages is they've entered
14:23:06 7 additional licenses. For instance, they entered a license with
14:23:11 8 Quest. They have entered these amendments with Thermo Fisher.
14:23:15 9 Those all affect the damages case, and we think we need to
14:23:19 10 supplement there.

14:23:20 11 And then, if they're going to change their
14:23:23 12 infringement allegations, we ought to be able to respond in
14:23:26 13 kind by adjusting our response of noninfringement defenses and
14:23:30 14 our response of invalidity defenses.

14:23:36 15 Final thing I'll point out, Your Honor, in that in
14:23:39 16 some of the various litigations, there have been -- there has
14:23:42 17 been discovery and testimony on the issue of inequitable
14:23:45 18 conduct. And this is an issue that is already in this case,
14:23:50 19 but additional information has come to light.

14:23:52 20 And the bottom line is that, when Ravgen and
14:23:58 21 Dr. Dhallan, the inventor, and his prosecuting attorney,
14:24:02 22 Cronin, went to the patent office, they said -- the claims were
14:24:05 23 initially rejected as obvious, and the examiner said you can
14:24:11 24 only get these claims if you show unexpected results. Well,
14:24:14 25 they said, look, we do have unexpected results, these test

14:24:17 1 results, that show the high performance of our system.

14:24:23 2 So they went and they made that argument to the
14:24:25 3 patent examiner, and the patent examiner granted the patents
14:24:28 4 based on that argument and noted that that was the most
14:24:33 5 persuasive evidence submitted during prosecution.

14:24:35 6 Well, at the very same time they were making that
14:24:39 7 argument, they were aware that the leading scientists out in
14:24:42 8 the industry had analyzed those same experimental results and
14:24:47 9 concluded that they were inaccurate and unreliable. And they
14:24:55 10 didn't disclose that to the patent office.

14:24:56 11 And both Dr. Dhallan and the prosecuting attorney
14:24:59 12 Cronin and another prosecuting attorney have been -- have given
14:25:01 13 testimony on those issues, and additional information has come
14:25:06 14 out that has highlighted both that the -- that the undisclosed
14:25:12 15 studies were highly material, in fact, so material that
14:25:16 16 Judge Klausner in California said the examiner would have
14:25:19 17 benefited from knowing that like-minded people in the art
14:25:24 18 thought these studies were relevant. And the evidence was so
14:25:29 19 strong, Your Honor, that he scheduled a bench trial inequitable
14:25:35 20 contract ahead of any jury trial. So that's the other area
14:25:38 21 where we think the record needs to be supplemented.

14:25:41 22 And so what we're looking for, Your Honor, is just
14:25:43 23 that, you know, both sides get to supplement and that the case
14:25:48 24 is ultimately tried on a complete record that accounts for
14:25:51 25 everything that's happened since the stay. And I think,

14:25:55 1 Your Honor, that was one of the rationales for stay in the
14:25:58 2 first place, so that we could account for everything that
14:26:01 3 happened during the course of the stay.

14:26:03 4 THE COURT: Well, there are two rationales, maybe
14:26:06 5 even three, for my stay. One was as you described. Two, I was
14:26:12 6 looking to see what was going to go on with what was pending in
14:26:19 7 Washington. And, three, I didn't want you to file any more
14:26:21 8 motions until I had an opportunity to look at this case,
14:26:24 9 because you filed way too many motions.

14:26:27 10 You've got to understand lawyers only have one role
14:26:29 11 in a case, and that's to resolve the case. You can do it in
14:26:32 12 one of three ways: You could settle it or I could grant a
14:26:36 13 well-taken dispositive motion or, three, I could try the case.
14:26:38 14 And I really don't care which of the three it is.

14:26:42 15 But a well-taken dispositive motion is not after
14:26:47 16 we've had 18 million other motions. You can get to the crux of
14:26:52 17 the case and present to the court your respective positions in
14:26:56 18 a whole lot easier manner and on a whole lot shorter road than
14:27:00 19 what I've seen in this case.

14:27:07 20 MR. SUMMERSGILL: Your Honor, we agree, and I do
14:27:09 21 think that the additional discovery will have the help of sort
14:27:11 22 of focusing the parties. And then what I'll say to you,
14:27:14 23 Your Honor, by my count, there are 21 total motions pending
14:27:18 24 before you.

14:27:18 25 THE COURT: Well, that's scary, because we only

14:27:20 1 got 17. We missed four somewhere.

14:27:24 2 MR. SUMMERSGILL: Maybe my math isn't good, but I
14:27:26 3 think it's 21. But 13 from Ravgen, eight from Natera. And I
14:27:30 4 will commit to the Court that we will reduce -- you know, after
14:27:33 5 this discovery period, we focus -- our way of approaching
14:27:40 6 things is try and focus in on the issues that really matter.
14:27:42 7 And that's what we did before.

14:27:43 8 THE COURT: All right. I'm going to shift gears on
14:27:46 9 you a minute. I don't need this responded to, but you get to
14:27:51 10 speak next anyway, whichever one of you wants to speak.

14:27:53 11 What I want you to do, I want each of you to tell me
14:27:57 12 in very few words what you think the court ought to do that
14:28:05 13 gets this case moving in a point with you-all working on it and
14:28:11 14 getting things to me that gets it to a resolution or a trial
14:28:16 15 setting without my -- if I have to deal with all these motions,
14:28:24 16 you're not going to get a trial setting for a long time,
14:28:26 17 because I have a tremendously large docket here. You'll get
14:28:30 18 the sad song I give everybody.

14:28:32 19 The last time the Austin Division of the Western
14:28:34 20 District of Texas got a new judge position was 1991. Unless
14:28:45 21 you've been living in a cave, you've noticed changes have come
14:28:47 22 to Austin in those 32 years. If you buy into the concept, and
14:28:51 23 you should, that the amount of legal activity in an area is
14:28:57 24 generally a direct relation to the number of people in an
14:29:00 25 area -- the more people you put down in an area, the more

14:29:03 1 people sue one another and more crimes get committed, and
14:29:06 2 that's certainly been true here -- our docket has more than
14:29:15 3 doubled since 1991 and we have the same number of judges
14:29:18 4 handling it. We have one more magistrate judge, but magistrate
14:29:19 5 judges can only go so far with you. But that's it.

14:29:27 6 All of the judges you heard that got appointed in
14:29:29 7 four years of the Trump administration and all of the judges
14:29:33 8 you've heard that have now been appointed in two years of the
14:29:35 9 Biden administrations have all been filling vacancies. And I'm
14:29:39 10 not going to tell you we didn't need the vacancies filled, but
14:29:44 11 that's not our problem in Austin. We don't have a vacancy
14:29:47 12 problem; we've got a pure lack-of-judge problem. And we don't
14:29:50 13 have an easy pool, like a lot of areas around the country have,
14:29:54 14 of senior judges. And it's hard to get additional judges to
14:29:58 15 come in here and work with this docket.

14:29:59 16 We also have an extremely complex docket in Austin
14:30:05 17 because we get almost every case that comes out of each
14:30:10 18 legislative session on constitutionality of legislative
14:30:14 19 statutes. You can file them all the around the state, but most
14:30:17 20 of them come here because it's where the legislature sits, and
14:30:21 21 the legislature is sitting right now. And in the minds of many
14:30:24 22 people in Texas, the legislature increasingly shows itself
14:30:27 23 incapable of drafting constitutional legislation, so it all
14:30:31 24 comes in. Those are hard cases; they always demand immediacy
14:30:35 25 on the docket.

14:30:36 1 As Austin has grown and has attracted more money to
14:30:41 2 Austin, including the high-tech companies that are here in
14:30:43 3 Austin, regular cases have gotten more complicated. We have
14:30:48 4 more securities cases. We have more complex contract cases.
14:30:52 5 And our criminal docket is rising, too.

14:30:57 6 So the only way I can get you in any kind of decent
14:30:59 7 schedule is if you-all decide you want to get this case
14:31:03 8 resolved and sit down and work with me on it.

14:31:07 9 I've got a big docket. But if you envision it as a
14:31:10 10 block of cheese sitting in your way, it's Swiss cheese, it's
14:31:14 11 not cheddar cheese there are little holes. One of the things
14:31:18 12 you have when you have an extremely big docket is there is
14:31:21 13 constantly cases moving off of it. Cases get settled, things
14:31:25 14 get transferred, things get moved. And so that opens up areas
14:31:32 15 to where I can do things that I couldn't actually schedule you
14:31:36 16 for that particular day on way out.

14:31:38 17 But your case -- anybody's case, to be able to fit
14:31:45 18 into one of those places where I can get you some relief and
14:31:49 19 get moving with you has to be in pretty good shape and ready to
14:31:55 20 go, and this one is just not quite there yet.

14:31:59 21 So the only reason I keep starting with the plaintiff
14:32:02 22 is because they started the fight and I'm old-fashioned. I
14:32:05 23 read from top to bottom, and the plaintiff is usually above the
14:32:09 24 "v," so I hear from the plaintiff first. But that's purely a
14:32:12 25 default. It's not because I have a built-in prejudice for the

14:32:17 1 plaintiff.

14:32:17 2 So I want to hear from the plaintiff, and in very few
14:32:20 3 words tell me what you think you-all can do and what can be
14:32:30 4 done to where we can look at a decent schedule to get some
14:32:32 5 resolution to now 21 motions. Because if I've got to try to
14:32:37 6 work on all those, then I drop everything else and you-all get
14:32:40 7 pushed even farther down the road. Plus I haven't gone into
14:32:46 8 any detail on your Daubert motions and things like that.

14:32:48 9 But let me tell you, if somebody's complaining about
14:32:54 10 bona fides, and the expert has testified in 23 other federal
14:32:59 11 courts, the chances that I'm going to be the outlier and tell
14:33:02 12 you I'm not going to let that expert testify in mine are slim
14:33:06 13 and none. That's why we have the wise people in Washington, to
14:33:13 14 look over my shoulder.

14:33:14 15 So, Mr. Dacus, tell me what you would propose.

14:33:16 16 MR. DACUS: Yes, Your Honor. And that's actually
14:33:18 17 what I was about to stand up and hopefully say to the Court.
14:33:22 18 As we lawyers tend to do, we sort of jumped into the briar
14:33:25 19 patch and started going down rabbit trails. I want to be clear
14:33:30 20 with the Court. We're here because we would like a trial date.
14:33:33 21 And with that we understand come limitations, and we are
14:33:36 22 absolutely more than willing to adhere to those.

14:33:39 23 I'll tell the Court we'll narrow down to three
14:33:41 24 motions in limine, we'll pick a summary judgment motion, we'll
14:33:45 25 pick a Daubert motion, if they'll agree to do the same and

14:33:48 1 we'll go forward on that basis. Our -- our primary objective
14:33:53 2 here is to get a trial date.

14:33:55 3 And I do think we've had a discussion about a limited
14:33:58 4 opening of discovery. Candidly, I think that makes sense. I
14:34:02 5 think the Court's spot on, though, in drawing a delineation
14:34:08 6 between inserting facts into the record and reopening the
14:34:11 7 pleadings for things that have not been previously pled. I
14:34:14 8 think the latter ought to be out of bounds. The former
14:34:17 9 certainly makes sense.

14:34:18 10 So, from our perspective, if the Court could give us
14:34:21 11 a trial date -- you know, I know the Court is very busy. I've
14:34:27 12 had scheduling conference with you in the last ten days, so I
14:34:30 13 know that very well.

14:34:31 14 THE COURT: Yeah. You're getting points.

14:34:32 15 MR. DACUS: Sir?

14:34:33 16 THE COURT: You're getting points as a frequent flyer
14:34:35 17 in my court.

14:34:36 18 MR. DACUS: Well, I'm glad to have the opportunity,
14:34:40 19 to be quite honest.

14:34:41 20 THE COURT: I don't know what you can cash them for.

14:34:43 21 MR. DACUS: Probably the same thing I cash all my
14:34:46 22 other points for: not much.

14:34:48 23 But if the Court would see fit to give us a trial
14:34:51 24 date, Your Honor, at the Court's earliest convenience, I'm
14:34:55 25 confident we can conduct this limited discovery, I'm

14:34:58 1 100 percent confident we can cut down the motions under the
14:35:01 2 Court's direction, and -- and this case will be ready for trial
14:35:05 3 whenever the Court says it can try us.

14:35:07 4 So if there -- if I have failed to answer anything,
14:35:11 5 it wasn't by design. I'm happy to do it.

14:35:13 6 THE COURT: You've answered.

14:35:15 7 Let me hear from the defendant.

14:35:17 8 MR. SUMMERGILL: Thank you, Your Honor.

14:35:18 9 First piece is we think the case ought to remain
14:35:22 10 stayed because there are IPRs pending where decisions will come
14:35:26 11 out.

14:35:26 12 THE COURT: Well, no. Let me just stop there. If
14:35:30 13 I'm going to open it up for some discovery and move along, that
14:35:36 14 doesn't mean I'm going to open it up for everything for you to
14:35:39 15 re-plead anything.

14:35:41 16 I can see merit in lifting the stay for you-all to do
14:35:45 17 what you need to do to resolve some of those motions and get
14:35:52 18 things moved around, where we can at least look at a trial
14:35:58 19 setting instead of waiting until we see what this last result
14:36:02 20 is going to be. And, you know, I would lift the stay, but
14:36:09 21 then -- if I like what you're going to tell me about what you
14:36:13 22 would do in the interim, but then tell you all you can do in
14:36:18 23 the interim is A, B, C, and D until we get there.

14:36:21 24 One of my frustrations with what goes on at the --
14:36:28 25 you know, the PTO and its various component parts is sometimes

14:36:35 1 it gets stayed too long. Sometimes different things happened.
14:36:40 2 So what I'm looking for is to move forward some way in this
14:36:43 3 case which is fair to everybody. And what I'm contemplating is
14:36:49 4 we start doing some things while we're waiting for this last
14:36:53 5 piece of the puzzle to fit together from the PTO and find out
14:36:57 6 who is right and who is wrong in their predictions.

14:37:00 7 Has anybody gone to Vegas and bet this thing? I'm
14:37:05 8 sure there's a book out there somewhere on patent and trademark
14:37:07 9 appeals that you could bet. You can bet on everything else out
14:37:11 10 there.

14:37:11 11 But I think we're close on that, and I'd like to see
14:37:15 12 some movement in this case that is fair to everybody.

14:37:18 13 MR. SUMMERGILL: Your Honor, if that's your
14:37:20 14 inclination, understood. What if we at least maintain the stay
14:37:26 15 through April so we see what happens with the Streck IPRs,
14:37:30 16 because that could impact things in the case and cause us to
14:37:35 17 have to redo things. And then after that we agree upon, you
14:37:37 18 know, a fact discovery period and an expert discovery period
14:37:41 19 and a dispositive motions period. We can try and work with the
14:37:45 20 other side to propose a schedule. I imagine we'll be in
14:37:48 21 different places, but with your guidance we can come up with
14:37:52 22 something.

14:37:53 23 And then, you know, one way -- and this is what --
14:37:56 24 and Ms. Limbeek was out with us in Central District of
14:38:03 25 California.

14:38:04 1 THE COURT: So pronounce your name for us.

14:38:04 2 MS. LIMBEEK: Oh. *Lim-beak*.

14:38:05 3 THE COURT: Limbeek. Okay. I was the one
14:38:07 4 pronouncing it wrong. I just want to make sure. I try to get
14:38:10 5 that right. I have a name like Yeakel that has been
14:38:13 6 mispronounced every possible way you can come up with, so I'm
14:38:16 7 very sensitive to people's names. So I apologize for
14:38:20 8 mispronouncing your name.

14:38:21 9 MS. LIMBEEK: No problem. I'm used to it.

14:38:23 10 THE COURT: Now proceed.

14:38:24 11 MR. SUMMERSGILL: I think both parties, you know,
14:38:25 12 have indicated they'll limit the number of motions. But one
14:38:27 13 way to force us to do that would be to impose some stringent
14:38:31 14 page limitations on motions in limine and dispositive motions
14:38:35 15 with which --

14:38:35 16 THE COURT: Another way is just to limit the motions
14:38:37 17 you're going to file.

14:38:38 18 MR. SUMMERSGILL: Right. Right. So what we're
14:38:40 19 committed to limiting the number of --

14:38:41 20 THE COURT: I know how to cut back on your motions.
14:38:44 21 I like to give you a hand in it --

14:38:47 22 MR. SUMMERSGILL: Thank you, Your Honor.

14:38:47 23 THE COURT: -- because I do want you to be prepared
14:38:48 24 to go to trial. But I don't see a whole lot of things that
14:38:52 25 you've filed so far that help me get you to trial. Let me put

14:38:55 1 it that way.

14:38:55 2 MR. SUMMERSEGILL: But -- so, Your Honor, bottom line
14:38:58 3 for us is we'd ask the stay at least stay in place until April
14:39:01 4 so we can see what happens in Streck. And then in the mean
14:39:04 5 time we can work out a proposed schedule of the fact discovery,
14:39:08 6 the expert discovery, and dispositive motions and submit
14:39:11 7 something.

14:39:11 8 THE COURT: How long if I, after you leave my
14:39:14 9 courthouse today, will it take you to sit down together in good
14:39:22 10 faith and talk about what it really would take to get this case
14:39:26 11 to trial and what everybody needs to do? And as part and
14:39:32 12 parcel of those discussions, presume one side's right and one
14:39:37 13 side's wrong on what is going to happen at the appeals board,
14:39:45 14 and then presume it the other way and work it out.

14:39:49 15 I think those things can happen, and you can do that
14:39:53 16 while we're moving down the line up there. I'm not just going
14:39:57 17 to stay it -- leave the stay in effect and wait until April and
14:40:01 18 then you-all start talking. I want you to start talking right
14:40:05 19 now, and I want you to come up with a plan for me and a
14:40:10 20 proposed schedule that makes some sense.

14:40:15 21 And then we can probably do this by phone. I don't
14:40:20 22 need to run you down here every time. But I like to run you
14:40:26 23 down here sometimes because I'm old-school and I think the
14:40:29 24 system works better when you're in a courtroom. I don't like
14:40:32 25 so much the informality of doing everything by telephone. But

14:40:35 1 I do recognize we've got a lot of out-of-town people in this
14:40:38 2 case, and I also like to see you-all at some point so I can
14:40:41 3 kind of size up who I think the problem is in the case. I'll
14:40:44 4 just tell you that.

14:40:46 5 MR. SUMMERSGILL: Your Honor, I'll say that when I
14:40:48 6 woke up in Boston Monday morning, it was 6 degrees, and when I
14:40:54 7 landed here it was 80 degrees and I went for a run along the
14:40:56 8 river. So I appreciate you bringing us down.

14:41:00 9 THE COURT: We're a friendly place down here.
14:41:02 10 College baseball season opened in Austin on February the 21st
14:41:03 11 in the evening, and I went to the ball game. And we're going
14:41:06 12 to play baseball until June down here. There will never be as
14:41:11 13 nice of night as the February night that it opened. And I'm
14:41:14 14 thinking this is really crazy. This is the best it's going to
14:41:17 15 get.

14:41:17 16 But we're -- we're generally this way. But you don't
14:41:23 17 live in this part of the country to complain about winter. You
14:41:25 18 live in this part of the country to complain about summer. So
14:41:29 19 August is not when you would particularly like to be set for
14:41:31 20 trial. Let me tell you that.

14:41:34 21 MR. SUMMERSGILL: Right. Right. Well, Your Honor, I
14:41:35 22 think if we had a week -- and they can weigh in -- we can sit
14:41:41 23 down with them and try and work out the two proposed schedules
14:41:44 24 that you suggested. And if we have disagreements, we can just
14:41:46 25 submit a document with the different positions to Your Honor,

14:41:50 1 if that would work.

14:41:51 2 THE COURT: All right. Now, I am aware that there's
14:41:57 3 a possibility, partly driven by the fact I've seen Mr. Dacus a
14:42:03 4 lot recently, that you-all might have more than one case that
14:42:07 5 you-all are working on at any given time. So I want to move
14:42:10 6 this, but I don't want to put you on some impossible schedule
14:42:16 7 to get something back with me where, you know, we're kind of
14:42:21 8 wasting time with. So you say a week. Let me just tell you I
14:42:24 9 think a week is a little optimistic to get things worked out.
14:42:28 10 And so I want to get something done, but I don't want to put
14:42:32 11 you on too short a list.

14:42:34 12 So, from either one of you, what would be a
14:42:39 13 reasonable period of time for you to discuss this and get me a
14:42:42 14 proposed schedule? And another thing I want you to do, as my
14:42:50 15 clerk has reminded me -- we recounted; we still have 17 -- part
14:42:53 16 of this I think I want you to agree and send us a list on what
14:42:57 17 you think the pending motions are in this case right now.
14:43:00 18 Because it's not a perfect system we have, and I don't care if
14:43:05 19 it is electronic, things go back and forth between here and the
14:43:08 20 Waco Division and things fall between the cracks.

14:43:11 21 So part of what I want in going forward in this case
14:43:17 22 is for us to all agree on what's pending right now. And then
14:43:20 23 hopefully we're going to work it down and not deal with it all,
14:43:22 24 but I need to know how you-all get to 21 from the 17 we have.

14:43:28 25 But, Mr. Dacus, what is really a realistic period of

14:43:32 1 time for you-all to discuss this, because I want you-all to
14:43:34 2 discuss it and I want your clients to know that I don't care
14:43:37 3 what they think.

14:43:38 4 MR. DACUS: Understood.

14:43:38 5 THE COURT: I'm dealing with the lawyers, and I want
14:43:41 6 you-all to discuss this as lawyers so we can get this case
14:43:44 7 ready to try.

14:43:46 8 MR. DACUS: I do think, Your Honor, within a couple
14:43:48 9 of weeks we should be able to do that. One thing I was going
14:43:52 10 to respectfully ask the Court, if the Court could give us some
14:43:55 11 indication of what you might be thinking as potential trial
14:43:59 12 date, I think lawyers work best if they -- if we have a target
14:44:04 13 out there of what the potential trial date might be. We could
14:44:07 14 better give the Court a schedule on what we think would be
14:44:10 15 appropriate as far as limiting motions, getting those to you,
14:44:14 16 and the fact discovery timeline.

14:44:17 17 THE COURT: Yeah. But I generally have let that be
14:44:27 18 driven by how long the lawyers realistically need. I don't
14:44:31 19 have -- if you've googled me to death, as I know you have, and
14:44:34 20 have looked at everything on my docket, because that's what
14:44:36 21 lawyers do, if you see anything that looks like a pattern, it's
14:44:42 22 purely coincidental. That's why I don't have patent rules.
14:44:46 23 There's a reason why the district doesn't have patent rules,
14:44:48 24 because it's so big and diverse, we have a hard enough time
14:44:50 25 getting local rules on anything with our divisions. But I

14:44:54 1 don't have specific rules in my court because I like to know
14:45:00 2 from the lawyers what you really need to do to get done and
14:45:05 3 then play it out and see how it goes.

14:45:07 4 MR. DACUS: Fair enough, Your Honor.

14:45:08 5 THE COURT: Now, I can tell you, as I said, think of
14:45:10 6 that block of cheese. If you just want me to pull a number out
14:45:15 7 of the air, it would be a long way off. But if I see something
14:45:17 8 from you that's cohesive, I can find a hole somewhere. There
14:45:23 9 are holes in that block of cheese. And so I don't have a deal
14:45:28 10 that it's always going to be this many months or it's always
14:45:31 11 going to be that. It's up to you. You-all have to want to get
14:45:36 12 this case resolved. And then I need your help and you telling
14:45:39 13 me what it's going to take.

14:45:40 14 So I want you to move first. But I'll get you back
14:45:42 15 on the phone when I get your report right away and can tell you
14:45:45 16 when I'm thinking about setting this based on what you're
14:45:48 17 telling me you need to do and what time you need.

14:45:52 18 But know it can be closer than probably what you're
14:45:58 19 thinking, of late '24 or something like that. You know, we've
14:46:03 20 got a lot of stuff going on between now and the fall, but I've
14:46:05 21 learned, because of the way this docket is and the fact that we
14:46:08 22 don't get any help, I just overbook. And God looks out after
14:46:12 23 small children and idiots and dogs and judges. And so I'm
14:46:16 24 going to get burned on it some time, but it's always worked out
14:46:21 25 to where who needed to get to trial got to trial because

14:46:24 1 everything else around them settled.

14:46:26 2 So if it doesn't, then, you know, I'll -- one of the
14:46:30 3 things I'll do is, if you or somebody else are ready at the
14:46:35 4 same time, is find a visiting judge somewhere. You might not
14:46:38 5 like that as well as you like this, but you don't know.

14:46:41 6 Or, you know, we have magistrate judges here, too.
14:46:47 7 You have to consent, but they have dockets that are much more
14:46:51 8 flexible and less complex than mine. So if you really wanted
14:46:55 9 to get it to trial, you could consent to one of our magistrate
14:46:59 10 judges. They're good judges.

14:47:01 11 MR. DACUS: That's helpful, Your Honor. And I think,
14:47:03 12 based on the guidance that you've given us, I'm still confident
14:47:07 13 that within a couple of weeks we could get a report to the
14:47:10 14 Court as to what we think we need to get the case ready.

14:47:13 15 THE COURT: How many are a couple of weeks?

14:47:13 16 MR. DACUS: Two weeks.

14:47:14 17 THE COURT: From today?

14:47:15 18 MR. DACUS: Yes, sir. Two weeks from today.

14:47:17 19 MR. SUMMERGILL: And, Your Honor, I'll propose 21
14:47:19 20 weeks and see if Mr. Dacus will agree with me. And we'll have
14:47:23 21 a real chance to negotiate and see if we can reach as much
14:47:27 22 agreement as possible.

14:47:29 23 THE COURT: So just give me a date that you -- you
14:47:33 24 can get me report in that's a realistic date.

14:47:41 25 MR. DACUS: I'd say March 14, Your Honor.

14:47:55 1 MR. SUMMERSGILL: Your Honor, how about March 22nd?

14:47:58 2 MR. DACUS: That's fine with us.

14:47:59 3 THE COURT: All right. Now, I know we do CM/ECF
14:48:02 4 filing and that makes it a 24-hour day. I don't want it in a
14:48:05 5 24-hour day.

14:48:06 6 If I'm telling you March 22nd, I want something in
14:48:09 7 here by five o'clock on March 22nd, whether you file it
14:48:13 8 electronically or whether you email it. Down here to my right
14:48:16 9 is Katie Carmona, who is my chambers attorney who has overall
14:48:22 10 supervision to your file.

14:48:28 11 I didn't need that, but thank you. I can do the
14:48:29 12 single-digit and double-digit math in my head without looking
14:48:33 13 at the calendar.

14:48:33 14 But I want a joint status report by the close of
14:48:36 15 business on March the 22nd, 2023. I want included in that is
14:48:42 16 your list of motions, and I want you to provide me with a copy
14:48:47 17 of Judge Klausner's ruling that is no longer in effect, because
14:48:51 18 if that comes up again, I want to be able to read it and hear
14:48:55 19 what you're arguing about it. So I want a copy of that, too.

14:48:58 20 But get me -- sit down, work with this, demean
14:49:03 21 yourselves like the professionals you are as lawyers, and lay
14:49:08 22 this out for me on what we can do to get it moved along, and
14:49:11 23 I'll give you a setting.

14:49:12 24 MR. DACUS: Okay. Great. Thank you.

14:49:14 25 MR. SUMMERSGILL: And, Your Honor, just to clarify --

14:49:15 1 and I think this is the case; just to make sure though -- in
14:49:20 2 this report you want both parties to specify at a high level
14:49:22 3 what we think needs to be done before, you know, the discovery
14:49:25 4 they think they need and the discovery we think we need, just
14:49:29 5 at a high level?

14:49:30 6 THE COURT: No. I really want you to agree on it.

14:49:33 7 MR. SUMMERSGILL: Well, we're going to try to agree
14:49:34 8 on it. I think we're going to end up realistically with some
14:49:38 9 disagreements. But just to -- the list --

14:49:41 10 THE COURT: If you have a disagreement, make sure you
14:49:45 11 both are operating in a reasonable manner. I don't want to see
14:49:52 12 an unreasonable disagreement. And the burden you have is I get
14:49:55 13 to define that. You know, the perks of a United States
14:50:02 14 district judge are highly overstated, but one of the things is
14:50:05 15 I get to define the terms we're going to use in my court.

14:50:09 16 MR. SUMMERSGILL: Understood, Your Honor.

14:50:10 17 THE COURT: Think of it as procedural claims
14:50:13 18 construction. Whatever you claim I'm going to construe, and
14:50:15 19 whatever you claim I'm going to construe.

14:50:17 20 But try to get all of that worked out, because I
14:50:18 21 think you can do it and we can refine this down and I can get
14:50:23 22 you done. And, in the interim, things that are going to happen
14:50:25 23 in Washington are things that are happening in Washington. And
14:50:28 24 we can let it overlap and we can get there.

14:50:32 25 Anything else while I have you-all here?

14:50:36 1 MR. SUMMERSGILL: Nothing from Natera, Your Honor.

14:50:37 2 MR. DACUS: Nothing from the plaintiff, Your Honor.

14:50:39 3 THE COURT: Okay. Well, thank you-all for being
14:50:41 4 available. I look forward to working with you on this, and I
14:50:45 5 look forward to getting a report on March the 22nd. And as
14:50:49 6 soon as I've had a chance to review it, we'll probably --
14:50:52 7 Ms. Carmona will contact you and see about setting up a
14:50:56 8 conference call of some kind, and we'll talk about it without
14:50:59 9 everybody running right back down here.

14:51:03 10 All right. Thank you-all. Court's in recess.

14:51:05 11 (End of transcript)

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1 UNITED STATES DISTRICT COURT)

2 WESTERN DISTRICT OF TEXAS)

3 I, Arlinda Rodriguez, Official Court Reporter, United
4 States District Court, Western District of Texas, do certify
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7 I certify that the transcript fees and format comply with
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10 WITNESS MY OFFICIAL HAND this the 2nd day of March 2023.

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12 /S/ Arlinda Rodriguez
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